

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	
)	
Missouri RSA No. 7 Limited)	
Partnership dba Mid-Missouri Cellular)	DA 98-2631
Petition For Waiver of Section 20.18(g))	
of the Commission's Rules)	

To: The Wireless Telecommunications Bureau

**PETITION OF MISSOURI RSA No. 7 LIMITED PARTNERSHIP dba MID-MISSOURI
CELLULAR FOR LIMITED WAIVER OF SECTION 20.18(g) OF THE
COMMISSION'S RULES**

MISSOURI RSA NO. 7 LIMITED PARTNERSHIP
dba MID-MISSOURI CELLULAR

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Dated: September 20, 2001

SUMMARY

Because Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular (“Mid-Missouri”) provides analog and TDMA-based cellular service in certain, sparsely populated counties in Missouri, it utilizes a cell layout in which large sections of its service area are served by a single transmitting station site (or cell). Based upon its network configuration, Mid-Missouri determined, and notified the Commission on November 9, 2000 of its intention to deploy a handset-based E911 Phase II solution because a network-based wireless E911 location solution that depends on triangulation from multiple cell sites to satisfy the Commission’s accuracy standards cannot be economically deployed in these markets.

However, Phase II-compliant handsets and necessary upgrades to cellular switching systems are commercially unavailable at this time. Therefore, the handset-based solution cannot be deployed by October 1, 2001, the deadline Section 20.18(g)(1) of the Rules imposes on carriers even where no Public Safety Answering Point (“PSAP”) request has been made. Thus, Mid-Missouri respectfully requests: (1) an extension of time up to and including July 31, 2002 in which to begin selling Phase II-compliant handsets and to complete corresponding upgrades to its cellular switch; and (2) approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by October 31, 2002; 50% of new activations by April 30, 2003, 100% of new activations by December 31, 2003; and 95% of embedded base by December 31, 2005.

No PSAP has yet to request Phase II E911 Service from Mid-Missouri. Accordingly, the proposed extension will prejudice neither PSAPs, the public safety community, Mid-Missouri’s subscribers, nor the general public. In conclusion, Mid-Missouri urges the Commission to grant the waiver requested herein.

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Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular ("Mid-Missouri"), by its attorneys and pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3 and the Public Notice in the above-captioned proceeding,^{1/} hereby requests a limited waiver of Sections 20.18(g) of the Commission's Rules, 47 C.F.R. §20.18(g), with respect to the October 1, 2001 deadline for implementing Phase II E911 service.^{1/} Mid-Missouri previously informed the Commission that it intends to deploy a handset-based approach to provide Phase II E911 service. Although Mid-Missouri remains committed to this solution, Phase II-compliant handsets and corresponding upgrades to cellular (and other mobile) switching systems remain commercially unavailable at this

^{1/} "Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification Requirements," DA 98-2631, released December 24, 1998 (hereinafter "Wireless E911 Waiver PN").

^{2/} To the extent necessary, Mid-Missouri respectfully requests a limited waiver of any other subsection of Section 20.18 (e.g., 20.18(e) and (h), which require licensees to provide Phase II E911 service in accordance with quantified accuracy standards) that the Commission deems necessary and relevant to extending the October 1, 2001 deadline stated in Section 20.18(g)(1).

time making it impossible, for reasons wholly beyond Mid-Missouri's control, to comply with the Commission deadlines for commencing sale of Automatic Location Identification ("ALI")-compatible handsets.

Thus, Mid-Missouri respectfully requests: (1) an extension of time up to and including July 31, 2002 in which to begin selling Phase II-compliant handsets and to complete corresponding upgrades to its cellular switch; and (2) approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by October 31, 2002; 50% of new activations by April 30, 2003, 100% of new activations by December 31, 2003; and 95% of embedded base by December 31, 2005.

In support of this petition, Mid-Missouri respectfully states as follows:

1. STATEMENT OF FACTS

Mid-Missouri provides analog and TDMA-based cellular service in Missouri RSA 7, Market No. 510B, which comprises Lafayette, Saline, Howard, Cooper, Pettis, and Johnson counties in Missouri,^{1/} and previously unserved territory located in MSA Market No. 24B(2), which comprises a large portion of Ray County and a small portion Cass County in Missouri.^{1/} These counties are sparsely populated. As a result, Mid-Missouri utilizes a cell layout in which large sections of its service area are served by a single transmitting station site (or cell). In this design, cell contour overlap is typically limited to areas where "hand-off" from one cell coverage area to another is essential for continuous, uninterrupted communications. Based upon its network

^{3/} This includes small portions of Ray, Carroll, Cass, Henry and Morgan Counties which were previously unserved areas claimed as part of RSA 7's CGSA.

^{4/} Mid-Missouri provides cellular service under Call Signs KNKN595 and KNKR207.

configuration, Mid-Missouri determined that a network-based wireless E911 location solution that depends on triangulation from multiple cell sites to satisfy the Commission's accuracy standards cannot be economically deployed in these markets.

Based on this determination, Mid-Missouri advised the Commission on November 9, 2000 that it would meet its E911 Phase II requirement by deploying a handset-based solution, which will provide public safety agencies with accurate location data for 911 callers and will thus meet the objectives set forth in the Commission's E911 rules. For reasons beyond Mid-Missouri's control, however, this solution cannot be deployed by October 1, 2001, the deadline Section 20.18(g)(1) of the Rules imposes on carriers even where no Public Safety Answering Point ("PSAP") request has been made. Because Phase II-compliant handsets and necessary upgrades to cellular switching systems are unavailable commercially, the waiver sought by Mid-Missouri is just and appropriate in this instance.

The Commission may grant a waiver for "good cause shown," if the waiver is deemed in the public interest, or if there are unique factual circumstances that render application of the rule inequitable or particularly burdensome.^{5/} Citing *WAIT Radio*, the Wireless E911 Waiver PN stated (at 4) that the Commission may waive a rule "where waivers are founded upon an 'appropriate general standard,' 'show special circumstances warranting a deviation from the general rule' and 'such deviation will serve the public interest.'" In its Fourth Memorandum and Order in this proceeding, the Commission concluded that there may be instances where waivers of Phase II E911

^{5/} 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

rules will be necessary, particularly if “technology-related issues” or “exceptional circumstances” preclude Phase II services from being deployed.^{6/}

As shown below, the instant petition complies with all the waiver standards articulated in the above-cited rules, decisional precedent, and orders and public notices issued in CC Docket No. 94-102. Indisputably, Phase II-compliant handsets and corresponding switch upgrades are unavailable on a commercial basis. This inescapable fact, which can be characterized both as an “exceptional circumstance” and a “technology-related issue,” renders adherence to the October 1, 2001 deadline impossible— not to mention “inequitable” and “particularly burdensome.” By allowing for the orderly implementation of Phase II compliant handsets, the limited waiver requested here will further the policy objectives animating Section 20.18(g) of the Commission’s Rules while serving the public’s interest in widely-available and accurate wireless E911 service. For this reason, Mid-Missouri’s request should be granted.

II. DISCUSSION

A. Phase II Compliant Handsets and Switch Upgrades Are Commercially Unavailable

^{6/} *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (Fourth Memorandum Opinion and Order in CC Docket No. 94-102), FCC 00-326, 15 FCC Rcd. 17442 ¶ 43 (2000), *recon. pending* (“Fourth MO&O”).

ALI-capable TDMA/AMPS handsets and related switch upgrades are, at present, commercially unavailable. No remedy to this situation will occur in the few days remaining before the October 1, 2001 Phase II-compliance deadline stated in Section 20.18(g)(1)—an unavoidable fact that others have amply demonstrated in this proceeding^{1/}. Thus, for reasons beyond Mid-Missouri's control, it is unable to deploy its handset based solution in accordance with the deadline imposed by Section 20.18(g)(1).

Relying on claims by handset and network equipment manufacturers, the Commission last year concluded that an October 1, 2001 deadline for deploying E911 Phase II service was reasonable. According to the Commission, "ALI technologies are already, or will soon be, available" for carriers seeking to comply with Phase II requirements.^{1/} This Commission prediction concerning equipment has proven to be unrealistic. No handset vendor is willing or able to commit to provide Mid-Missouri with the handsets, and Mid-Missouri's switch vendor is unable to provide it with the necessary switch upgrades in sufficient time to enable Mid-Missouri to begin selling E911 Phase II compliant handsets and to provide Phase II E911 location service by the October 1, 2001 deadline.

As others have noted, small rural carriers like Mid-Missouri face a specific disadvantage in attempting to obtain location-capable equipment and technology from manufacturers. As compared

^{1/} See, e.g., Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II Implementation Milestones at 13-16 (August 23, 2001); Comments of AT&T Wireless Services, Inc. at 6 (August 20, 2001); Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules at 3 (July 30, 2001); Qwest Wireless, LLC and TW Wireless, LLC's Petition for Extension or Time or Waiver of Section 20.18 of the Rules at 8 (July 23, 2001); and South Canaan Cellular Communications Company L.P. Petition for Waiver of Section 20.18(g) of the Rules at 2 (August 31, 2001).

^{8/} Fourth MO&O, 15 FCC Rcd. 17442 at ¶ 44.

to urban carriers or large regional and nationwide carriers, rural carriers, whose subscriber numbers are comparatively small and geographically dispersed, are unable to negotiate directly with handset manufacturers and typically acquire their handsets from distributors. Relative to carriers with regional or nationwide footprints, rural licensees will have the least negotiating leverage to secure any priority in obtaining new handsets even when they do become commercially available. As succinctly described by Inland Cellular Telephone Co. in its recent Phase II waiver request:

Smaller carriers in smaller markets are at the ‘end of the line’ for product distribution. It is accepted industry practice that [General Availability] dates are availability dates for large market carriers only and that small carriers can expect significant delays. It is Inland’s experience that it often takes anywhere from six to nine months *after* the General Availability (“GA”) date for Inland to receive its equipment.^{1/}

Mid-Missouri vigorously echoes these sentiments. Lacking the market power that induces manufacturers to engage in direct negotiations, Mid-Missouri must deal with intermediaries that face no regulatory consequences if Phase II-compliant handsets are unavailable by the October 1, 2001 deadline. Moreover, even if contrary to all expectations and indications the GA date for this equipment were to occur on October 1, months will pass before the product trickles down to small rural carriers like Mid-Missouri. As a result, Mid-Missouri and other rural carriers opting for the handset approach to E911 Phase II compliance are compelled to pursue a limited waiver of Section 20.18(g)(1).

The E911 Phase II deployment for rural TDMA carriers such as Mid-Missouri is further complicated by the fact that AT&T and Cingular Wireless, the two largest TDMA-based cellular

^{9/} Inland Cellular Telephone Co. Petition For Limited Wavier Of Sections 20.18(e) and (g) Of The Rules, dated July 30, 2001, at 6 (emphasis in the original).

providers, have independently announced their intent to migrate toward alternate digital technologies. As a result, a question has arisen as to whether or not E911 Phase II compliant TDMA handsets will be made commercially available for the TDMA technology at all. Cingular and AT&T have each, in their own right, filed for waivers of the E911 Phase II accuracy requirements to allow for deployment of stop-gap solutions for their existing TDMA networks. AT&T has stated that its proposal to deploy a MNLS solution will not meet the FCC's accuracy requirements. Moreover, as of this point in time, Mid-Missouri's network vendor has not yet committed to make support for that technology available for its TDMA infrastructure users. Cingular has proposed overlaying a network-based solution. However, even if such an overlay could be economically deployed in a rural area, Cingular's filing acknowledges that that proposed solution would not provide the required accuracy in the rural areas. Accordingly, Mid-Missouri cannot join either Cingular or AT&T with their proposed interim solutions which, admittedly, will not achieve the FCC-required accuracy, even if they could be economically deployed in a rural-only network such as Mid-Missouri's. Therefore, as of this point in time, Mid-Missouri has no alternative but to seek an extension of the handset deployment dates while it attempts to ascertain whether or not such handsets will actually be made available and, if not, whether an economically deployable network-based solution that will meet the FCC's accuracy requirements, can be deployed in conjunction with a TDMA-based digital network.

B. Small and Rural Carriers Face Unique Issues in Meeting Their E911 Phase II Obligations

Mid-Missouri and other small, rural carriers advised the Commission in November 2000 of their plans to deploy a handset-based solution for meeting the E911 Phase II requirements set forth in Section 20.18(e)(h). The handset approach was selected because the costs associated with a

network-based deployment were intolerably high for a small, rural carrier that has only a relatively modest number of subscribers over which to spread the costs of complying not only with E911 Phase II, but such other federal mandates as CALEA, wireless number portability, *etc.* In addition, there was (and is) substantial uncertainty as to whether a network-based solution will provide the location accuracy quantified in Section 20.18(h) in non-urban environments with expansive geographic areas served by the minimum number of cell sites needed to provide reliable coverage to a sparse and diffuse population. Moreover, in many cases, topographical features impede radio propagation. For the foregoing reasons, the unique attributes of providing wireless communications in rural areas in many cases eliminated the network-based approach as a viable option for carriers seeking to comply with their E911 Phase II obligation. Many rural carriers like Mid-Missouri thus determined that only the handset-based solution was economically feasible. Having no real alternative but to select the handset approach, Mid-Missouri and similarly-situated carriers, for reasons wholly beyond their control, now find themselves unable to obtain ALI-capable handsets or network-based solutions that can meet Section 20.18(h) accuracy standards.

C. Granting a Limited Waiver to Mid-Missouri Will Serve the Public Interest Without Prejudice To PSAPS.

Granting the limited waiver sought by Mid-Missouri here will serve the public interest without prejudice to PSAPs, the public safety community, or the general public. Specifically, the proposed waiver will still promote the Commission's paramount objective of rapidly deploying Phase II E911 service by allowing Mid-Missouri to extend to its customers and to the public in Missouri RSA 7 and MSA 24 B(2) the most accurate location technology at the earliest possible date. Assuming the limited waiver is granted, Mid-Missouri will continue to consider proposals for network-based approaches during the extended compliance period, notwithstanding its inability, to

date, to find any such proposal whose costs are reasonable and whose vendor will guarantee compliance with the accuracy requirements of Section 20.18(h) in Mid-Missouri's rural service area.^{10/} A waiver will thus afford Mid-Missouri maximum flexibility to determine the optimum solution for its unique circumstances as a rural wireless carrier.

This flexibility will not come at the cost of delay, increased cost or other prejudice to PSAPs or the public safety community in Mid-Missouri's service territory. Indeed, no PSAP has requested that Mid-Missouri initiate Phase II (or Phase I) implementation, and no network-based solution would be deployed by Mid-Missouri until it has received such a request. Regarding deployment of a handset-based approach, no delay will ensue from grant of the limited waiver proposed here. Commercial unavailability of Phase II handsets and switch upgrades are causing the delay; the multiple waivers which the Commission has received are merely the unavoidable consequence (not the cause) of the unfortunate delay in Phase II deployment. Thus, the modest extension in the October 1 deadline proposed here will prejudice neither PSAPs, the public safety community, Mid-Missouri's subscribers, nor the general public.

^{10/} Mid-Missouri remains skeptical that a network-based solution can be economically deployed and, at the same time, achieve Commission accuracy criteria. Accordingly, at present, Mid-Missouri cannot change its November 2000 decision that a handset-based approach is its only viable means for achieving Phase II compliance. If, as a result of its ongoing evaluations, Mid-Missouri learns of an economically feasible and sufficiently accurate network system, then it will amend its November 2000 determination and advise the FCC that it will deploy such a solution within 6 months of a PSAP request.

In sharp contrast, denial of the waiver will serve no purpose. The handsets simply do not yet exist at this time making it impossible to comply with the current handset-based solution deadlines. Similarly, Mid-Missouri continues to be unable to identify a viable network-based solution that can meet the Commission's accuracy requirements when deployed in Mid-Missouri's rural market with its network configuration. Coupled with the fact that no PSAP has yet to even request E911 Phase I service from Mid-Missouri, it is clear that denial of this waiver would neither hasten the availability of E911 service to the market nor serve any other public interest.

4. Proposed Compliance Schedule

Mid-Missouri respectfully requests: (1) an extension of time up to and including July 31, 2002 in which to begin selling Phase II-compliant handsets and to complete corresponding upgrades to its cellular switch; and (2) approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by October 31, 2002; 50% of new activations by April 30, 2003, 100% of new activations by December 31, 2003; and 95% of embedded base by December 31, 2005.

The proposed compliance schedule is necessitated by the present commercial unavailability of Phase II-compliant handsets and corresponding switch upgrades. It is further compelled by the discrimination customarily faced by small, rural carriers with respect to the availability of new wireless equipment that is in high demand. Even if the GA date for Phase II-compliant handsets and switch upgrades were to occur on October 1, the demands of the large urban carriers would quickly exhaust the initial supply. Several additional months will pass before product "trickles down" to small rural carriers like Mid-Missouri. In this context, the extension represented by Mid-Missouri's proposed compliance schedule is eminently reasonable, appropriate and necessary.

III. CONCLUSION

The foregoing demonstrates and explains the technology-related issues and special circumstances that satisfy the general requirements to waive a Commission rule, as well as the more detailed requirements to waive the E911 Phase II rules set forth in the Fourth MO&O. Accordingly, there is good cause to grant the limited waiver requested herein.

Respectfully submitted,

MISSOURI RSA NO. 7 LIMITED PARTNERSHIP
dba MID-MISSOURI CELLULAR

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Dated: September 20, 2001

CERTIFICATE OF SERVICE

I, CAROL MINDZAK, a secretary with the law firm of Kurtis & Associates, P.C., do hereby certify that I have this 20th day of September 2001, had copies of the foregoing “PETITION OF MISSOURI RSA NO. 7 LIMITED PARTNERSHIP dba MID-MISSOURI CELLULAR FOR LIMITED WAIVER OF SECTION 20.18(g) OF THE COMMISSION’S RULES” sent via first class mail, postage pre-paid to the following:

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Commissioner Kevin J. Martin
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/s/ Carol Mindzak

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